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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2012

1101337

Carol M. Perdue, individually and as next friend and
guardian of Anna K. Perdue

v.

Lisa Nix Green et al.

1101506

William D. Motlow, Jr., and Shane Sears

v.

Lisa Nix Green et al.

Appeals from Montgomery Circuit Court
(CV-10-900013)

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On Applications for Rehearing

PER CURIAM.

In Perdue v. Green, [Ms. 1101337, March 16, 2012] ___ So. 3d ___ (Ala. 2012), this Court vacated the trial court's judgment approving a class-action settlement concluding litigation related to the Alabama Prepaid Affordable College Tuition ("PACT") Trust Fund a/k/a The Wallace-Folsom Prepaid College Trust Fund on the ground that the settlement agreement impermissibly contravened Act No. 2010-725, Ala. Acts 2010,¹ specifically the portion of § 16-33C-19, Ala. Code 1975, that explicitly forbade the PACT board from violating "the contractual relationship existing between a PACT contract holder and the PACT board." Soon after the release of our decision, the legislature enacted Act No. 2012-198, Ala. Acts 2012, repealing § 16-33C-19.

The PACT board now applies for a rehearing of our decision vacating the trial court's judgment, contending, among other things, that the impediment to approval of the class-action settlement agreement, which this Court found in

¹As noted in Perdue, Act No. 2010-725 amended the statutory provisions relating to the PACT program to provide annual appropriations to the PACT Trust Fund beginning in 2015 and continuing through 2027.

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the statutory language of § 16-33C-19, has been removed. In support of its applications, the PACT board emphasizes this Court's duty to apply "any change in the substantive law" that may occur while a case remains pending on appeal.² Therefore, the PACT board asserts, this Court must apply Act No. 2012-198, which repealed § 16-33C-19, to the facts of the present case. It further notes the legislature's contemporaneous enactment of § 16-33C-23, which grants to the PACT board broad powers "to negotiate, accept, and implement a legally binding resolution with PACT purchasers and beneficiaries to address any actuarial deficit in the PACT Trust Fund." The PACT board notes that Act No. 2012-198 states that it "is ... remedial and curative and is retroactive to April 30, 2010,"³ and argues that the new law must be applied retroactively "unless

²See, e.g., Hamilton v. Scott, [Ms. 1100192, May 18, 2012] ___ So. 3d ___, ___ (Ala. 2012) ("[I]t has long been held that if there is a change in either the statutory or decisional law before final judgment is entered, the appellate court must 'dispose of [the] case according to the law as it exists at the time of final judgment, and not as it existed at the time of the appeal.'" (quoting Alabama State Docks Terminal Ry. v. Lyles, 797 So. 432, 438 (Ala. 2001), quoting in turn other cases)).

³April 30, 2010, represents the effective date of Act No. 2010-725. The trial court preliminarily approved the proposed settlement agreement on May 5, 2011.

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it impairs some vested right acquired under the prior law." In their response in opposition to the PACT board's applications for rehearing, the objecting class members -- Carol M. Perdue, William D. Motlow, Jr., and Shane Sears -- maintain that retroactive application of Act No. 2012-198 would unconstitutionally strip them of certain vested rights. See, e.g., John E. Ballenger Constr. Co. v. State Bd. of Adjustment, 234 Ala. 377, 381, 175 So. 387, 390 (1937) ("[I]t is said that the repeal of a statute makes it stand as though it never existed except as to vested rights, and that the Legislature has full power to take away rights conferred by statute which have not become vested").

Resolution of the retroactivity issue necessarily requires a determination as to the constitutionality of the retroactive application of Act No. 2012-198 under the facts of this case. In keeping with our general rule that such issues should be first addressed by the trial court, see, e.g., Alabama Power Co. v. Turner, 575 So. 2d 551, 553 (Ala. 1991), we grant the applications for rehearing and remand this case for further proceedings consistent with this opinion. Upon the conclusion of those proceedings, the trial court shall

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enter an order and file it with this Court on return to remand for further appellate proceedings.

1101337--APPLICATION FOR REHEARING GRANTED; REMANDED.

1101506--APPLICATION FOR REHEARING GRANTED; REMANDED.

Woodall, Parker, and Shaw, JJ., and Houston, Lyons, Pittman, and Moore, Special Justices,* concur.

Malone, C.J., and Stuart, Bolin, Murdock, Main, and Wise, JJ., recuse themselves.

*Retired Associate Justices J. Gorman Houston, Jr., and Champ Lyons, Jr., and Court of Civil Appeals Judges Craig S. Pittman and Terry A. Moore were appointed to serve as Special Justices in regard to these appeals.